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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
MUR 6135 ) CASE CLOSURE UNDER THE  
UNKNOWN RESPONDENTS ) ENFORCEMENT PRIORITY  
 ) SYSTEM

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal. The

Commission has determined that pursuing low-rated matters compared to other higher-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6135 as a low-rated matter.

In this matter, the complaint, filed by Charles H. Bell, Jr., General Counsel of the California Republican Party, asserts that, between 5:00 - 8:00 p.m. on election day, November 4, 2008, voters throughout Northern California received automated telephone calls ("robocalls") stating the following:

This is a breaking news alert. Early returns show Barack Obama will win Florida, Ohio and Virginia closing John McCain's only path to the White House. Obama Biden<sup>1</sup> is a virtual certainty. Early returns also show Democrats will have a large majority of both houses of Congress, regardless of the final results from larger states like Colorado and California. This was a breaking news alert.<sup>2</sup>

According to the complainant, the robocalls, which apparently emanated from at least two sources, "Jonathan Heuy" at and "Voice Messaging Center" at (866)

<sup>1</sup> The word "landslide" might have been used, instead of "Biden."

<sup>2</sup> What appears to be a recording of the same robocall is also available as part of an Internet news story concerning the alleged incidents, at <http://www.sacbee.com/static/weblogs/capitolalert/latest/016748.html>

1 252-6256, lacked disclaimers stating who paid for and authorized them, pursuant to 2 U.S.C.  
2 § 441d(a) and 11 C.F.R. § 110.11. The complainant further alleges that the robocalls were  
3 targeted to Republican voters in an attempt to suppress turnout, particularly in California's  
4 "contested Fourth District," the outcome of which was not decided until early December  
5 2008. Attached to the complaint are what appear to be three identical recordings of the  
6 telephone calls in question, along with the names of, and contact information for, three  
7 individuals who allegedly received the recorded messages.

8 This Office initially took several steps in order to identify and locate the potential  
9 respondents in this matter. Specifically, we followed up with the complainant in order to  
10 ascertain whether he had any further information as to the source of the calls, but he was  
11 unable to provide us with any additional information.<sup>3</sup> We also contacted the Federal  
12 Communications Commission and canvassed publically available sources, but were unable to  
13 derive any further information leading to the identity of the callers. Although the  
14 complainant believes the calls may have targeted California's Fourth Congressional District,  
15 this Office has been unable to ascertain the scope of the activity at issue. Thus, this Office  
16 does not believe the Commission should open an investigation or expend further resources on  
17 this matter. Accordingly, in furtherance of the Commission's priorities and resources, and  
18 relative to other matters pending on the Enforcement docket, the Office of General Counsel  
19 believes that the Commission should exercise its prosecutorial discretion and dismiss the  
20 matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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<sup>3</sup> The complainant noted that he had also filed a complaint with the California Fair Political Practices Commission, who he informs us dismissed the action.

**RECOMMENDATIONS**

The Office of General Counsel recommends that the Commission dismiss  
MUR 6135, close the file, and approve the appropriate letters.

Thomasenia P. Duncan  
General Counsel

Date

12/4/09

BY:

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